

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

INNOVATION WIRELESS

Petition For Reconsideration

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File No. 0004086023

ORDER

Adopted: November 26, 2010**Released: November 29, 2010**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* This *Order* denies a petition for reconsideration of the dismissal of a defective application. Innovation Wireless (Innovation) seeks reconsideration of the dismissal of the above-captioned application for a nationwide license authorizing low power operation on certain 450-470 MHz band frequencies.¹ For the reasons discussed herein, we conclude that the application was properly dismissed, and we deny Innovation's petition.

2. *Background.* Section 90.267 of the Commission's Rules designates certain 450-470 MHz band frequencies for low power operation.² The frequencies are divided among six groups, which are subject to different rules regarding, *e.g.*, area of operation, use, and eligibility.³ On January 8, 2010, Innovation filed the above-captioned application seeking authority to operate on a nationwide basis on three Group B frequencies.⁴ On July 3, 2010, the application was dismissed.⁵

3. On July 30, 2010, Innovation sought reconsideration of the dismissal. It argues that the application should not have been dismissed for requesting a nationwide service area,⁶ because Section 90.267 provides that Group B frequencies "are available nationwide on a coordinated basis."⁷ Innovation also argues that other applications for nationwide use of low power frequencies have been granted.⁸

4. *Discussion.* Innovation's application was dismissed pursuant to Section 1.934(d) of the Commission's Rules, which permits dismissal without prejudice of an application found to be defective.⁹ Under Section 1.934(d)(2), an application is defective if it requests an authorization that would not comply with one of more of the Commission's Rules and does not contain an alternative proposal that

¹ See Petition for Reconsideration filed July 30, 2010 (Petition).

² See 47 C.F.R. § 90.267.

³ See 47 C.F.R. § 90.267(b)-(g).

⁴ See FCC File No. 0004086023. Innovation indicated that the license would be used to operate a system to synchronize clocks within buildings and campuses. See *id.* at Statement of Public Interest.

⁵ See Dismissal Letter, Ref. No. 4995910.

⁶ See Petition at 2.

⁷ See 47 C.F.R. § 90.267(d).

⁸ See Petition at 2.

⁹ See 47 C.F.R. § 1.934(d).

fully complies with the Rules.¹⁰ We conclude that Innovation's application was defective, and that the dismissal therefore was proper.

5. Innovation's argument that Section 90.267 authorizes the use of Group B frequencies with a nationwide area of operation is incorrect. Section 90.267(h)(1) specifically provides that "wide area operations will not be authorized. The area of normal day-to-day operations will be described in the application in terms of maximum distance from a geographic center (latitude and longitude)."¹¹ Innovation's application did not meet this requirement. Section 90.267 provides that some low power frequency groups are available "nationwide" in order to distinguish them from the groups that are subject to different rules in different areas,¹² not to authorize use in a nationwide area of operation.¹³

6. Innovation also argues that "the Bureau has previously granted nationwide authorizations for equally situated applicants. In keeping with the most basic principles of fundamental fairness, the Bureau is required to give due regard to the rights and privileges of Innovation."¹⁴ Innovation does not identify any such applicants, so we cannot determine whether they are in fact "equally situated." Moreover, an erroneous grant of a nationwide license to a previous applicant is not grounds for granting Innovation such a license.¹⁵

7. *Conclusion.* Group B low power frequencies are available for use only in specified areas of operation, so Innovation's application for a nationwide license was properly dismissed. Consequently, we deny Innovation's petition for reconsideration of the dismissal.

8. Accordingly, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by Innovation Wireless on July 30, 2010 IS DENIED.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁰ See 47 C.F.R. § 1.934(d)(2).

¹¹ See 47 C.F.R. § 90.267(h)(1).

¹² Compare 47 C.F.R. § 90.267(d) with 47 C.F.R. § 90.267(b), (f).

¹³ See Amendment of Part 90 of the Commission's Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450-470 MHz Band, *Report and Order*, WT Docket No. 01-146, 18 FCC Rcd 3948, 3956 ¶ 19 (2003) ("Available nationwide (not just top 100 urban areas)").

¹⁴ See Petition at 2.

¹⁵ See Warren C. Havens, *Memorandum Opinion and Order*, 17 FCC Rcd 17588, 17592 ¶ 10 (2002) (citing, e.g., Quinnipiac College, *Memorandum Opinion and Order*, 8 FCC Rcd 6285, 6286 ¶ 12 (1993)).